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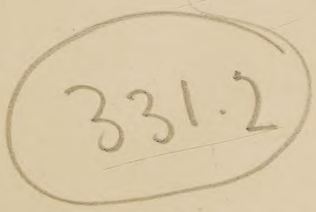

THE

CRIMINAL CODE OF THE JEWS

THE

CRIMINAL CODE OF THE JEWS

ACCORDING TO THE TALMUD

MASSECHETH SYNHEDRIN

BY

PHILIP BERGER BENNY

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1880

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THIS SERIES OF PAPERS

Is Dedicated

WITH EVERY SENTIMENT OF

KINDLY REGARD

PREFACE.

The following chapters appeared originally as articles in the 'Pall Mall Gazette.' They are here re-printed without material alteration, and with some few additions. To the kindness of Mr. F. Greenwood, the writer is indebted for many suggestions, which were followed when preparing them for publication.

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THE

CRIMINAL CODE OF THE JEWS.

CHAPTER I.

INTRODUCTORY.

He who would understand a people must know its laws, especially its penal laws : not the mere dicta of its statutes, but their practical application ; and its scheme of judicial administration. The legal code of a community is—to coin a pseudo-scientific term—but a system of applied morals. In the criminal legislation of a country is embodied the public standard of right and wrong. The organisation of its tribunals, the simplicity of its procedure, the severity of its penalties, the nature of its punishments, are so many living illustrations

of the wisdom and forethought and justice and humanity of those who frame, interpret, and abide by these laws. Nowhere are national peculiarities more characteristically prominent than in the juridical scheme and penal practice of a people. Every detail is instructive. What, for instance, can be more suggestive of the temper of the ancient Egyptian, with his high notions of rectitude and his stern sense of justice, than the prohibition of pleading on behalf of either plaintiff or defendant? Sombre, impassive, and undemonstrative sat the thirty judges and their self-elected president in the hall of assembly. With reverential awe for the wise men, the suitors entered, each bringing with him a written statement of the cause to be adjudicated upon. The depositions were handed to the chief of the tribunal, who received them without question or comment. The parties as silently withdrew: only when the decision of the court had been arrived at were the plaintiff and defendant re-admitted,

in order that the judgment might be communicated to them. The picture of inflexible impartiality here presented to us is complete.

Again, can anything be more characteristic of Assyrian life than the inequality between man and woman in the eyes of the law which we find indicated in some of the few fragments hitherto discovered of the penal code of Ashur? 'If a husband,' runs a cuneiform text, 'say unto his wife "Thou art not my wife," he shall pay half a minna of silver.' But 'if a woman repudiate her husband, and say unto him, "Thou art not my husband" (*ina naru inadussu*), he shall drown her in the river.' In the criminal system of the Athenians, too, it is not a little indicative of the refined, hypersensitive, and artificially cultured Greek to find him attempting to emulate the 'gods' by extending to the children of an offender the punishment inflicted on their parent. Even when a crime had already been expiated by death, the descend-

ants of the condemned suffered the penalty of legal disqualification. Students of antiquity have been by no means indifferent to the lesson thus conveyed. The legal codes of most ancient peoples have been diligently examined. The laws of the Brahmans and of the Parsis, of the Greeks and of the Romans, of the Chinese and of the Mussulmans, have found zealous exponents. The judicial system of the Hebrews alone has been neglected. Notwithstanding its value as a record of Jewish thought and feeling and custom, it is almost unknown to English scholars and jurists.

It is probably no exaggeration to assert that not a dozen of the foremost Biblical critics in England know anything of the legal code of the Jews. The most profound ignorance prevails regarding the practical mode of administering law and justice as it obtained among the Hebrews during the prophetic period and at the time of the destruction of the second Temple of Jerusalem.

The notions of Jewish law and jurisprudence generally current are extremely vague and undefined. The popular conceptions upon the subject are gathered from the injunctions and ordinances of the Mosaic Pentateuch. As a matter of fact, the laws of Moses are about as well calculated to give one an insight into the Hebrew legal scheme as a perusal of our statute-book—a collection of our Acts of Parliament, our written law—alone, without the aid of common law and precedent, would give of the English system of juridical procedure. He who would understand the penal code of the Hebrews—the practical code, that is, of the people, as it was in operation during the later period of Jewish nationality—must not depend upon the Pentateuch. He must turn to the Talmud—that much maligned and even more misunderstood compilation of the rabbins; that digest of what Carlyle would term *allerlei-wissenschaften*; which is at once the compendium of their literature,

the storehouse of their tradition, the exponent of their faith, the record of their acquirements, the handbook of their ceremonials, and the summary of their legal code, civil and penal. Herein he shall find a system of jurisprudence ingenious and elaborate; a scheme of organisation at once simple and effective; and a criminal law the most interesting and probably the most humane that antiquity has transmitted to us.

The sensation produced some few years ago by the appearance of Dr. Deutsch's brilliant article on the Talmud is scarcely yet forgotten. Had this accomplished scholar been longer spared, literature would doubtless have been enriched with many a monograph upon the thousand and one subjects treated of in this composition of the rabbins. Fate has decided otherwise. But the seed he cast abroad into the world has not all fallen into stony or sterile soil. He succeeded in arousing a general and wide-spread interest in the Talmud and its contents; an interest

which the modern spirit of inquiry has intensified. We purpose, therefore, to devote to the criminal law of the Talmud as laid down in Massecheth Synhedrin—not wholly, but principally there—a few brief chapters explaining the organisation of tribunals among the Jews, the constitution and jurisdiction of their Synhedrin, their system of procedure, their mode of examining witnesses, their classification of crimes, the punishments they inflicted, and their methods of executing those capitally condemned. As we before observed, the subject is one entirely unexplored; and an exposition, however brief and imperfect, cannot but throw additional light upon the character, intellect, and peculiarities of a truly wonderful people.

Two noteworthy—we cannot say successful—attempts have of late been made to present to modern times a fair and impartial view of the criminal legislation of the Hebrews. One of these is the monograph of M. Thonissen, in his 'Études sur l'Histoire

du Droit Criminel des Peuples Anciens.' The other is the 'Législation Criminelle du Talmud' of Dr. Rabbinowicz. Both must be regarded as failures—the former conspicuously so. M. Thonissen, who is one of the ablest Catholic professors in Belgium, has failed from want of special knowledge; Dr. Rabbinowicz has failed in spite of profound Talmudic knowledge and general erudition. A few observations in explanation of this will throw some light upon the peculiar nature of the treatise which forms the basis of our knowledge of the Jewish penal code. M. Thonissen has founded his study of the subject upon the text of the Pentateuch, disregarding altogether the commentaries of the rabbins and their expositions. Now we have no wish whatever to enter into any argument as to the value of Hebrew tradition or the Divine origin of the Oral Law. This, however, we assert: that the enactments, civil and criminal, of the Five Books of Moses, as they stand in the Bible are unintelligible

and incomprehensible unless accompanied by the explanation furnished by the Mischna and Ghemara, which together constitute the Talmud. In the first place, Moses indicated only general principles for the guidance of the Hebrew judges. A system of legal procedure is altogether wanting. 'The wisdom of a lawgiver,' says Bacon, 'consists not only in a platform of justice, but in the application thereof.' Moses furnished in the written law such a platform of justice; but the practical application thereof can only be gathered from the oral law, from the traditions and precedents of the Mischna. We will quote one contingency only—one among many others that arise in practice—to show the occasional inadequacy of the provisions of the Pentateuch taken alone. According to the Mosaic law a perjurer when convicted was to suffer the same punishment as the person against whom he testified would have been condemned to had the false accusation been established. In most cases the rule would suffice; in a great

number it would be impracticable. For instance, a *kohen*—a priest, that is—was forbidden to marry a woman who was divorced, or a widow who had performed the ceremony of loosening the shoe of her brother-in-law. Should he in defiance of this prohibition marry such a female his sons were debarred from the priesthood. Assuming now that an Israelite charged a *kohen* with being the issue of such a union—a charge which, if proved, would remove him from his office—and this witness was subsequently convicted of perjury: how could the slanderer who had violated his oath be degraded from what he was not permitted to assume—the functions of the priesthood? No penalty in such a case is provided by the Mosaic code. Yet it could scarcely have been the intention of the legislator to punish the lying witness in one case and permit him to get off scot free in another. The traditionary procedure clears up the difficulty. Similar difficulties continually arise in the practical application of

most of the written enactments. In all these instances we are driven to the Oral Law for a satisfactory explanation. The Hebrew lawgiver foresaw probably the awkward contingencies which would inevitably occur consequent upon a hard and fast adherence to ordinances formulated in the Pentateuch, and suited only to the circumstances and conditions of the people under his personal guidance and supervision in the Wilderness. Hence his injunction that the Jews should, immediately upon their settlement in Palestine appoint them 'judges and officers,' *i.e.* form regular courts for the administration of justice. This of course necessitated the inauguration of a recognised mode of procedure formulated in consonance with the traditions of the people, and varied as the exigencies of the nation required and experience rendered advisable. The nature of the arrangements made in compliance with the Mosaic injunction can be gathered only from the Talmud. M. Thonissen's essay upon the Jewish code re-

sembles most nearly that which a foreigner would write upon the English criminal laws after a perusal of our statute-book—our Acts of Parliament—disregarding such authorities as Blackstone and Coke and Bracton, and their common-law system, and ignorant altogether of the practice of the courts and the precedents they have established. What such an exposition would be worth may easily be imagined. That M. Thonissen should under these circumstances have failed is scarcely to be wondered at.

M. Rabbinowicz's failure is now to be accounted for. He has given to the world a disquisition upon the penal code of the Hebrews in the shape of a critical translation of the treatise Synhedrin, and of such portions of Makkoth as refer to the punishment of criminals. He is himself a profound Talmudist; but he does not make allowance for those who have not the advantage of being intimately acquainted with the rabbinical authorities. The Talmud, be it ob-

served, is essentially argumentative; this fact should constantly be borne in mind. The Mischna no sooner lays down an axiom than a Beraïtha (precedent or tradition whose origin is coeval with those contained in the Mischna, but which the editor of the last-named collection decided to omit) is brought forward to contradict it. Hereupon the commentators set to work in order to harmonise the apparent inconsistency or disaccord. An opponent will then urge against the agreement thus established the opinion of one of the Thanaïm—rabbins, or heads of colleges, who were anterior to, or contemporaries of, the editor of the Mischna. The Amoraïm —doctors whose disquisitions constitute the Ghemara—thereupon take up the discussion pro and con. Frequently the arguments terminate, and apparently no conclusion is arrived at. It is this that renders the study of the Talmud so extremely difficult. It seems impossible to understand which of the views enunciated by the respective authori-

ties we are to accept as decisive. Only those accustomed to the mode of reasoning adopted by the rabbins, and acquainted with the relative value to be attached to the dicta of the several doctors as explained in the various commentaries, can deduce the laws with any approach to accuracy.

Many points, however, are wholly undetermined, and probably always will remain unsolved. In giving a translation of the treatise Synhedrin M. Rabbinowicz has therefore placed in the hands of the reader the material whence he may derive a knowledge of the criminal law. Some explanations of seemingly difficult points are given; but the student must pick his own way without the training or help which would enable him with profit to do so. Of the multifarious opinions expressed he nine times out of ten knows not which to choose. Hence, despite the undoubted ability of the author, and the acknowledged merit of the work itself, Dr. Rabbinowicz has not succeeded in giving a

digest of the criminal law of the Talmud. His introduction is by far the best part of the work; but the views therein expressed do not always merit complete and entire acceptance. We shall, as we proceed, indicate here and there the doubtful points, as they appear to us, of M. Rabbinowicz's summary.

Having thus briefly, by way of introduction, explained the source whence our knowledge of the Hebrew penal code is to be derived, and pointed out what we regard as the defects of those who have of late attempted an exposition of the enactments of which it is composed, we may proceed to the consideration of this interesting judicial system.

CHAPTER II.

THE DEVELOPMENT OF THE MOSAIC CODE—OBSOLETE LAWS—THE LEX TALIONIS—PRESCRIPTIONS OF THE TALMUD.

THE penal code of the Hebrews in the Talmudic period had developed itself gradually in a manner somewhat similar to the Athenian criminal law in the days of Demosthenes. In each of these legal systems we can discover three elements superimposed. In the case of the Greeks there had been originally the laws of Draco formulated about six centuries before the Christian era. They consisted of a series of religious ordinances and traditionary practices. These were subsequently modified by Solon; still further amended in all probability by Clisthenes after the triumph of the Democracy. This period saw the institution of popular tribu-

nals at Athens, and the assimilation of the mode of procedure in civil and criminal cases. Towards the end of the fifth century B.C. the progress of the state and the multiplying of parties led to a further development of the legal system. One of the results of this, by the way, was the appointment of a public prosecutor. Three analogous stages of growth—though not quite so clearly marked in the second epoch—are discernible in the development of the Hebrew laws, as we find them formulated in the Talmud. There are, in the first place, the Mosaic injunctions, religious, social, and political, which constitute the foundation of the scheme. There are then the practical details as to the organisation of the tribunals. These must have had their origin in the early days of the Jewish Commonwealth; most probably during the lifetime of Joshua. One of the principal commands laid upon the Israelites in the Wilderness was, as we have already mentioned, to appoint judges, *i.e.* establish courts

for the administration of justice, as soon as they were settled in Palestine. (Deut. xvi. 18.) Lastly, we find in the Talmud, laws attributable evidently to the period which intervened between the destruction of the first and second Temples. About this time a number of the Mosaic ordinances had become utter anachronisms. Some were perfectly impracticable; one or two were no longer even understood. The exigencies of the age and the circumstances of the people necessitated the adoption of several enactments unknown to the Pentateuch. Throughout, however, the whole of the penal code of the Talmud—as in its various stages of development—the Divine origin of the Hebrew legal system is never for a moment lost sight of. The abolition of a Mosaic enactment is with the Rabbins simply a statement that it has fallen into desuetude. In formulating a new law, rendered necessary by the altered condition of their existence, it is invariably founded upon some principle or

other contained in the Written Law, or deducible from the general dicta therein laid down by their inspired legislator. Like the Greeks—'The Sons of Saturn,' sings Hesiod, 'gave to man justice, the most precious of good gifts'—the Jews, in the interpretation of their ancient laws, as in the application of new ordinances, were ever mindful of the Divine source whence their system of judicature originated.

The Mosaic prescriptions, which in the course of time had fallen into desuetude, and had in fact become altogether obsolete, include many of the most characteristic laws of the Pentateuch. Among such ordinances was the injunction which determined the punishment of a stubborn and rebellious son. Of this commandment the Ghemara—by the dicta of Rabbi Simon—observes: 'The Biblical law concerning a stubborn and rebellious son never has been and never can be practically applied. If we nevertheless study it, it is simply as one does a literary ex-

ercise.' Similarly, the Mosaic enactment, in accordance with which a city given to idolatry was ordered to be destroyed, had become a pure anachronism in the latter days of the Jewish nationality. According to the Talmud, this law could not have been carried into effect at any period. And the penal code further took no longer any cognisance of a large class of offences known as acts of omission. An extremely important ordinance of the Pentateuch concerning the punishment of perjurers was imperfectly understood by the Rabbins. The apparently simple law which determined the penalty incurred by witnesses whose evidence was proved to be false was beset with difficulties, and found inapplicable to the times. The Ghemara declares through Rabba that the 'Mosaic injunction which condemns the witness who is perjured, by proving an alibi against him, is a *hidousch*—a law we are not able to explain or comprehend.'

Among the ordinances of Moses, of which

no trace is to be found in the Talmud, is the so-called *lex talionis*. More nonsense has probably been written respecting this law of retaliation (which crops up in every code of antiquity) than would fill the proverbial bushel a goodly number of times. It is generally quoted as satisfactorily demonstrating the harshness and severity of the punishments ordained in the Pentateuch.

More than one theological school consider the dicta 'eye for eye, tooth for tooth' as the very quintessence of Jewish legislation. The odium attached to the Mosaic code, on account of this law, furnishes another illustration of the vulgar adage about giving a dog an ill name. Curiously enough, there is a remarkable parallel to this misconception in the case of the Athenian jurist Draco. His code is fabled to have been written in blood; death was the least of the punishments he inflicted. His name has furnished an appellation for all that is harsh even to cruelty, unmerciful even to barbarity.

Yet what is the truth? His laws relating to homicide (graven on a pillar at Athens) continued in force as long as the city was independent. A murderer was permitted, under this code, to fly in order to escape the vengeance of the family of his victim. Sentence of exile could be pronounced by the judges in cases of manslaughter. Degradation from the rank of citizen was one of the penalties of his system. And more remarkable still, Pollux (ix. 61) distinctly says that the fine for slaying a man was ten oxen! So much for the reputed severity of the Draconic Laws. The ridiculous and wholly absurd nature of the prejudice anent that bugbear of the Five Books of Moses, the law of retaliation, is even more unfounded than in the case of Draco.

The *lex talionis* was simply a law by which a person deliberately and purposely and maliciously inflicting upon another certain specified injuries, was liable to have similar injuries inflicted upon his own person.

This penalty was directed against a mode of vengeance extremely prevalent in ancient days. Mutilation, dismemberment, and similar eccentricities of our progenitors, 'the children of the world,' were common methods of hurting one's supposed enemies, especially in eastern lands. There such practices are by no means forgotten even now. The object of the criminal was to palpably and visibly disfigure or emasculate his victim. In such cases what would have been the deterrent effect of a pecuniary indemnity, of incarceration, or even of corporal punishment? None whatever, where a man had determined upon injuring his opponent in a manner sufficiently conspicuous to disgrace or dishonour him. Nothing but the *lex talionis* was likely to prove of service in preventing the commission of such inhuman and dastardly outrages. That the law was not otherwise applied by any nation we have ample evidence to show. Among the Greeks, for instance, who included this enactment in their ancient code,

('Evil for evil,' says Æschylus, 'was the sentence of ancient days') one of the principal functions of the second of the Athenian tribunals was to arrange between the murderer and the parents of his victim the payment of the blood-money authorised by their penal laws. To suppose that a man guilty of a capital offence should be condemned in a pecuniary penalty, while one accidentally injuring his neighbour was subject to the *lex talionis*, would be the height of absurdity. Among the Hebrews the necessity for preserving the law of retaliation as part of the legal code had disappeared long before the Talmudic period. In accordance with their traditions, all cases of assault or wounding were punishable by fines, the offender making full and ample indemnity to the person hurt.

With regard to the new laws formulated in the Talmud, and of which no trace whatever is to be discovered in the Pentateuch, there is one of the utmost significance; one that will admit of a very simple explanation,

though M. Rabbinowicz, in his introduction before alluded to, seems to misapprehend it somewhat. It is the law requiring evidence that a warning was given to the individual about to commit a crime, that the act he contemplated was an offence entailing such and such a punishment or penalty. The Bible knows nothing whatever of such a proviso. It required merely the testimony of competent witnesses as to the fact that a crime had actually been committed; and that the said witnesses had detected the accused in *flagrante delicto.* Certain of the Rabbins, however, seem to assert that to ensure conviction in a capital trial, it must be proved that the culprit—prior of course to the perpetration of the offence—was cautioned that the crime he contemplated was murder; that the perpetration entailed death; and more, he must have been informed which of the four kinds of death he was liable to suffer if convicted!

This certainly is a very remarkable provision if intended to be construed as Dr.

Rabbinowicz points out. He regards this law of the Talmud as purposely enacted in order to abolish altogether the punishment of death. It would of course have this effect. For no individual would be likely to inform his friends or neighbours, or acquaintances, that he was about to commit a murder. The opportunity to give him this preliminary warning would never, in point of fact, occur. The same of adultery, or seduction with violence, crimes which were also punishable with death. By insisting upon this conditional circumstance as absolutely necessary to ensure a capital conviction, the criminal would, as intended, invariably escape the penalty of death. Against the views of Dr. Rabbinowicz we would urge two very simple facts. In the first place the ordinances and precautions of the Talmud were already — and without the proviso referred to—more than sufficient to prevent the sentence of death from being pronounced except in extremely rare cases. And in the second place, the

opinions of many of the Thanaïm are, as we shall in the proper place fully explain, opposed to the assumption of Dr. Rabbinowicz. The true purpose and object of this curious institution of the Talmud will then appear.

CHAPTER III.

THE CONSTITUTION OF THE COURTS—THE QUALIFICATION OF JUDGES—PERSONS DISQUALIFIED.

For the administration of justice there existed among the Hebrews three kinds of tribunals: 1, Petty courts composed of three judges, and competent to adjudicate upon civil causes only; 2, The provincial Synhedrin, consisting of three-and-twenty members, and having criminal jurisdiction as well as the power of deciding in ordinary matters; and, 3, The Great Synhedrin of Jerusalem, which was the supreme authority of the nation. In contradistinction to the practice of every other ancient nation, the King, among the Jews, was not permitted to exercise judicial functions. Unlike the High Priest, he could neither judge nor could he be judged. Nor

had the Sovereign any voice, prerogative, or influence in the appointment of the judges; nor was it for him to interfere in any way with the organisation of the various tribunals. The people alone had the right to nominate the members of the Synhedrin. The scheme of legal administration was based on the representative system and what we should nowadays term universal suffrage. In the case of the petty courts for the trial of civil processes the mode of appointment was essentially primitive and simple. The plaintiff and defendant in a cause nominated each of them a competent person to act as judge. The two who were thus selected together named a third. Of course these tribunals were not permanent. They sat only when required.

In the case of the courts of criminal jurisdiction the mode of organisation and the manner in which they were constituted were as follows :—Every town inhabited by one hundred and twenty families could have

a Synhedrin of three-and-twenty members To each place thus qualified the Great Synhedrin of Jerusalem sent an order bidding the residents assemble and nominate from among themselves such as were 'learned and modest and popular.' Fit representatives and apt were accordingly elected. A return was thereupon made to the Great Synhedrin, and the supreme body immediately despatched an authorisation, in conformity with custom, which constituted the delegates named a corporate Synhedrin. As a rule these tribunals in the smaller towns sat only occasionally for judicial purposes. But in large and important centres there were, necessarily, permanent courts. In those cities where rabbinical colleges were established for the study of the law, such institutions, by a natural transition and development, came to be charged with the administration of justice. Such, for example, were the academies of Jabneh, under the famous Gamaliel; of Beni Berak, under Rabbi Akiba; of Lud, under Rabbi

Eleazar ; of Sikhni, under the direction of Hananya ben T'radyon.

In Jerusalem there were three Synhedrin : two ordinary, of twenty-three members each, and the Great Synhedrin of the nation, consisting of seventy-one of the most eminent judges of the country. The first sat in that part of the Temple called the Har-habaith ; the second, in the court known as the Azara ; and the supreme council in the Lish-kat-hagazith. The first consisted of members selected from the various provincial Synhedrin ; the second was recruited from the first ; and the Great Synhedrin, in turn, filled up any vacancies in its numbers from those who composed the second. This completed the administrative system of the Hebrews for judicial purposes. The organisation was exceedingly simple, eminently representative, and it seems to have been thoroughly effective. Every suitor found at his own door a tribunal competent to hear and decide his plaint without delay or expense ; criminals

were spared suspense and ignominy by being able to secure an immediate trial; and within easy reach of either complainant or defendant, prosecutor or prisoner, was a permanent Synhedrin to which appeals could be made from the sentence or decision of the local court.

Under this scheme every man—every Jew, that is—might aspire to the dignity of a judge. In order, however, to prevent any but competent and well-qualified persons from being appointed to the various tribunals ample precautions were taken. It was not necessary in the case of the provincial Synhedrin to guard against sheer inefficiency. No Israelite could be absolutely ignorant of the law. It must be remembered that education was well advanced among the Hebrews, especially after the first or Babylonian captivity. A system of compulsory instruction had been introduced by Joshua, the son of Gamala. There was a school-board for each district. Every child more than six years of age was obliged to attend the communal

schools, unless receiving private lessons at home from qualified tutors. Such importance does the Talmud attach to the training of the young that it enters into the minutest details upon the subject. From his earliest years the Jewish boy was a diligent student of the Bible. It was his primer and reading-book. Its laws and traditions were almost as familiar to him as his own existence; they formed part and parcel of his every-day experience. In riper manhood he attended each evening after labour the expositions of the Scripture. On Sabbaths, on festivals, and on the mornings of Monday and Thursday, he was present as a religious duty at the public reading and interpretation of the law.

A Jew could not but be well acquainted with the leading principles of his legal code and their general application. He was, in fact, competent to decide—much as our justices of the peace are—any ordinary infractions of the law likely to occur in his own district. But to become member of a Synhedrin having

extensive criminal jurisdiction, to be qualified to act as judge in a trial involving the life or death of a fellow-creature, was another matter. Here legal acumen, proved ability, sound knowledge, and undoubted integrity were required. Such men, 'learned in the law' and versed in science, might subsequently be admitted into the Synhedrin of Jerusalem, the supreme council of the nation. The standard of qualification was therefore necessarily high in every particular. Accordingly, when a mandate from the capital authorising the formation of a criminal tribunal arrived in a town, the residents took every precaution to nominate such men whose antecedents and acquirements guaranteed their fitness for the posts they were to occupy. The election of representatives incompetent and inapt might have been followed by a refusal of the certificate of legality from the Great Synhedrin.

Few things are more remarkable in the Hebrew penal code than the clauses by which

certain persons were disqualified from acting as judges, under any circumstances whatever. All who made money by dice-playing, by any games of hazard, by betting on pigeon-matches, and similar objectionable practices, were not only incapable of becoming members of a tribunal, but were not permitted to give evidence in a trial. The Ghemara regards a man who gains money by the amusements named as actually dishonest. A Jew who was in the habit of lending money upon usury was in like manner disqualified. The disqualification extended not only to those who took interest of their brethren, but even to cases where the money had been borrowed by a heathen. Nor could a slave-dealer sit as judge. The Talmud stigmatises such a person as inhuman and unfeeling, and incapable therefore of deciding an issue involving the life or liberty or even property of another. Of course this ordinance applied to the traffic in human creatures who were not Jews; the kidnapping of an Israelite being punishable

with death. The following were also regarded as judicially incapacitated: those who dealt in the fruits of the seventh year, for they could not be deemed conscientious; those who were in any way concerned in the cause to be adjudicated upon, for they were interested; all relatives, no matter what the degree of consanguinity, of the person accused; all who would inherit property from the criminal who was on trial, or would benefit by his condemnation or loss; and persons who had been guilty of seduction or the lesser form of adultery which was punishable by fine or flogging.

One other disqualification, noteworthy in its way, also existed. A man who had not, or had never had, a fixed occupation, trade, or business, by which he earned a livelihood, was not allowed to act as judge. 'He who neglects to teach his son a trade,' say the rabbins, 'is as though he taught him to steal.' Such a lad had no resource in manhood but to beg or rob. A man without a calling or profession was moreover regarded as not cal-

culated to have consideration or sympathy for those exposed to the hard contingencies of life. In trials where capital punishment might be inflicted in case of conviction the following also were disqualified :—An aged man, because his years and infirmities were likely to render him harsh, perhaps obstinate and unyielding ; a judge who had never had any children of his own, for he could not know the paternal feeling which should warm him on behalf of the son of Israel who was in peril of his life ; and a bastard ; not an illegitimate son—for such a relationship could not exist among the Jews—but one born of a forbidden or criminal connection. Nor under any circumstances was a man known to be at enmity with the accused person permitted to occupy a position among his judges. Such enmity was, by the way, presumed to exist when the judge or witness had not spoken to the person charged with any offence for a period of more than three days.

According to Massecheth Synhedrin,

mental qualities and intellectual acquirements of no ordinary character were necessary to constitute a competent judge. He was, in the first instance, to be modest, of good repute among his neighbours, and generally liked. He must have been intimately acquainted with the written enactments of the legal code, its traditional practices, the precedents of the colleges, and the accepted decisions of former judges. He must have studied not alone the laws applicable to the times in which he lived, but those which from altered circumstances had fallen into desuetude. He was required to be a proficient in various branches of scientific knowledge, especially in medicine and astronomy. That the rabbins were well grounded in physiology, pathology, and such modes of chemical and organic analysis as were then understood can be shown by many instances. Thus we find Rabbi Ismael and his pupils engaged in dissection in order to study the anatomy of the human frame (Bekoroth) ; Baba bar Boutah

(Ghittin) is recorded to have demonstrated, in a case before him, that a witness had attempted to impose upon the court, by bringing the albumen of an egg, and falsely representing it to be spermatic fluid. And the Academy of Hillel is said to have contained among its disciples eighty who were acquainted with every branch of science known in those days. A knowledge of languages, too, was indispensable for those who aspired to the membership of a Synhedrin. The services of an interpreter were never permitted. The judges were therefore bound to be acquainted with the tongues of the neighbouring nations. In the case of a foreigner being called as witness before a tribunal it was absolutely necessary that two members should understand the language in which the stranger's evidence was given; that two others should be able to speak to him; while another was required to be both able to understand and to converse with the witness. A majority of three judges could

always thus be obtained on any doubtful point in the interpretation of the testimony submitted to the court. At Bither there were three rabbins acquainted with every language then known ; while at Jabneh there were said to be four similarly endowed with the gift of 'all the tongues.'

As regards the general ability of the judges, Rabbi Jehuda asserts that 'they should be such apt and skilful logicians that they could demonstrate from the written text of the Pentateuch itself that all the reptiles therein declared to be impure were pure'! Indeed, to those acquainted with the Talmud, nothing is more startling than the resources of argument displayed by the rabbins. That it is in many cases purely sophistic does not detract from their high character any more than the forensic casuistry of a modern counsel detracts from the morality of the man. And their intellectual acumen, their logical powers, were employed on behalf of the criminal,

whose advocates the judges themselves were. Of this we shall see more later on.

When, therefore, the Talmud insisted upon a high standard of qualification for the members of the Synhedrin, it was animated not alone by a due and proper regard for the dignity of the judicial office, but by a merciful consideration for the offender, and a desire to secure for one whom they looked upon as an unfortunate brother, the advantage of skilful, acute, and learned counsel.

CHAPTER IV.

THE CONSTITUTION OF THE COURTS—DIVISION OF AUTHORITY—PROCEDURE.

The jurisdiction exercised by each of the three kinds of tribunals engaged in the administration of the penal laws was clearly defined. A conflict of authority was impossible. Each court took cognisance of certain specified offences, and of these only; each court possessed the power of inflicting certain punishments or of imposing certain penalties, and none other. Even the amount of fine or indemnity payable in the majority of cases was already determined by written enactment. And where this was not so fixed or approximately indicated, the constitution of the tribunals permitted of arbitration, and an estimate of the penalty incurred by an offender could readily be arrived at.

Before describing the authority and privileges attached to the respective tribunals it is necessary to note that, owing to the prescriptions of the Mosaic code, the classification of crimes among the Hebrews was somewhat different to that generally prevailing in modern times. Many offences which in our days are considered to infringe only the moral code were regarded among most ancient peoples in a very different light. Such, for example, are adultery and idolatry. These among the Jews entailed death. Again, many crimes now generally punishable with imprisonment were, according to the Hebrew laws, only punishable by fine or pecuniary indemnity to the prosecuting party. Among these are theft of all kinds, assaults, injuries to the person, and damage to property.

Another large class of offences was unknown to the Jews. There were in Palestine no game laws; there could therefore be no poaching. The relief of the poor was

compulsory ; there was no pilfering. It was permitted to enter a neighbour's garden or orchard or vineyard and eat one's fill ; petty larceny and trespassing were therefore impossibilities almost in rural districts. Hence the penal code of the Hebrews dealt practically with a comparatively small number of offences briefly specified, clearly defined, and entailing in each case a fixed punishment or penalty, which could not be varied. The jurisdiction of the respective courts admitted, therefore, of easy definition. The ordinary tribunals, composed of three judges, adjudicated summarily upon all cases of assault, all cases of theft, all cases of robbery with violence, and all cases of injury to person or damage to property. In fact, all crimes entailing pecuniary penalties upon those convicted of their commission were tried before the courts of three members. In every instance it was deemed an advantage, in later Talmudic times, to have at least one *mumcha* (authorised jurist) among the three. The

presence of such a rabbin added, of course, to the local repute of the court in which he sat. It may be worth while pointing out here that, apart from the legal jurisdiction pertaining to them, these bodies performed when required certain other functions, some of them semi-religious. They could, for instance, estimate the worth of the fourth year's produce, which had to be paid to the priests; they acted as arbitrators; they formed a court of equity; they could pronounce judgment in ordinary business litigation; they could absolve an Israelite from a rash vow; and (a rather difficult task, if the Jews of old resembled in some respects their modern representatives) they could declare the personal worth of a Hebrew when he had sworn to give an equivalent sum to the Temple.

A Synhedrin of three-and-twenty members was competent to judge all criminal cases, involving (1) capital punishment; (2) internment in a city of refuge; (3) imprisonment or seclusion for life; and (4) corporal

punishment. To these four classes of offences belong murder, adultery, blasphemy, idolatry, incest, manslaughter, and seduction with violence. An animal (an ox that had gored a man so that he died) was also condemned to be slaughtered by a tribunal of three-and-twenty judges. The beast was in some sort put on trial; because of the heavy pecuniary penalty imposed where the owner could be proved to have known the vicious propensities of the animal. The value of a life had to be estimated by the court in such cases. The Synhedrin (like the smaller courts of three) sat whenever occasion required, and always *en permanence* on Mondays and Thursdays. These days were selected for the regular administration of justice on account of their convenience to judges, suitors, and the public. On the mornings named the inhabitants of the outlying districts and suburbs came into the towns for the purpose of attending the reading of the law in public assembly. Every adult male,

unless incapacitated by sickness, was present on these occasions. Here, then, was an excellent opportunity for the settlement of disputes and the trial of offenders. But there were other reasons for the regular bi-weekly meeting of the Synhedrin. These courts of three-and-twenty members constituted the local governing body of their district or division. Their functions were important and multifarious. They estimated the amount of the taxes to be imposed; they organised the distribution of communal charity; they were charged with the management and administration of the public elementary schools; they saw that weights and measures were carefully inspected from time to time, affixing their seals to all legal standards; they constructed, examined, and repaired the defences of the walled towns; they were the local highway board; they were sanitary authorities; they discharged the thousand and one duties of local government.

The mode of procedure in ordinary trials

was very simple. The prosecutor attended before the Synhedrin and lodged his complaint; the officer appointed by the court for that purpose sought the accused person and brought him before the tribunal. The witnesses were summoned and heard. Both parties then quitted the hall where the trial took place. The judges deliberated, and afterwards readmitted the prosecutor and the defendant. Judgment was then pronounced. No advocates were heard; the members of the tribunal deeming it meritorious to exercise the utmost ingenuity in order to discover mitigating facts or extenuating circumstances when the law was clearly against the accused. Right of appeal existed and had to be acted upon within thirty days of the original hearing. In such cases the cause was taken to a neighbouring Synhedrin, which, from its containing a greater number of more learned and practised jurists, was deemed of superior authority. In all instances, whether the trial was before a full court or an ordinary tribunal of

three, the reasons and arguments upon which the decision was founded had to be communicated to the suitors. But, on the other hand, the fact of there having been any dissentient judges among the members was always carefully concealed. As a natural consequence the sentence pronounced was regarded as the unanimous decision of the tribunals. Dissatisfaction was thus discouraged, and appeals were probably, as one of the rabbins states, of infrequent occurrence.

The Great Synhedrin of Jerusalem, consisting of seventy-one members, was, as the supreme council of the nation, the highest court of criminal jurisdiction. This important body, and this body only, was competent to judge (1) a High Priest against whom an accusation had been preferred; (2) a false prophet; (3) a city given to pagan practices; and (4) an entire tribe. In the legal administration of the Hebrews the principal duties devolving upon the grand tribunal of the

capital were: to exercise a species of supervision over the provincial Synhedrin; to grant the certificates authorising their constitution and confirming their legality; to furnish precedents and traditions whenever required by the subordinate courts, and to give satisfactory interpretations of doubtful and difficult points. If a case, civil or criminal, was brought before an ordinary tribunal of three-and-twenty judges, and these found themselves without a registered decision which enabled them to pronounce an authoritative sentence, a statement of the facts was carefully prepared and submitted to a neighbouring Synhedrin supposed to be of greater repute. If these found a recorded precedent or accepted judgment in an analogous case, it was explained to the delegates of the other court. If, on the other hand, no such tradition was forthcoming, application was made to the first of the Synhedrin in Jerusalem, that sitting in the Har-habaith. Should these find themselves

unable to give the required assistance, an appeal was made to the second Synhedrin, located in the Azarah. If, again, this court was not in possession of a satisfactory tradition, the matter was brought before the Great Synhedrin. In all cases where no precedent existed this body decided in accordance with justice and equity. The case was laid before them, carefully discussed, and after due deliberation the assembly voted. The views of the majority were considered binding. Noncompliance with a judgment of the Great Synhedrin was punishable with death. An elder, or judge, who acted or taught in contravention of the decisions of this august council was by the Mosaic code to be condemned to die. The Talmud made a notable distinction in the application of this law. If the heterodox teaching of the recalcitrant individual was directed against an injunction of the Pentateuch he was not condemned; if against the tradition, or precedent, or interpretation of the Synhedrin he could be capi-

tally convicted. This apparently places the dicta of the rabbins above the words of the sacred and inspired text. The explanation, however, is simple. Contrary to the received impression that the Talmudists adhered to the letter and neglected the spirit of the Law, the reverse was the case. They investigated the motive and endeavoured to ascertain the object of each enactment. Now, Moses wished only to prevent an elder from leading the people astray by teaching what was illegal. A lawyer who nowadays advised a client that forgery and embezzlement were under certain circumstances not criminal would scarcely succeed in deceiving the most addle-pated individual who came to him for counsel; but the same authority might do serious injury, even to educated men, by misrepresenting the decisions of the law-courts on matters of common interest or private concern. So the rabbins argued. An elder who taught in opposition to an explicit command of the Pentateuch could

do little or no harm, for everybody knew the injunctions of Moses; but he who misinterpreted to his community the decisions of the Synhedrin might cause irreparable mischief to his brethren generally. Hence the practice of the Talmud. The Great Synhedrin at Jerusalem possessed likewise the power to condemn or exile in times of danger, or for the public good, any person who was considered dangerous to the community. No tribunal, it must also be noted, could try or punish a person for an offence perpetrated in its own presence. If a murder was committed in full view of a Synhedrin, the criminal had to be taken before another court of three-and-twenty judges in order to be examined, and if found guilty convicted.

It will be seen that a trial before a Synhedrin was virtually a trial by jury. The members of the court were moreover the prisoner's counsel as well as his judges. They sought to interpret the law in his favour; failing this, they endeavoured to

find extenuating circumstances. As jurymen they could make such recommendations of mercy as their own feelings dictated: as judges they could give practical effect to these recommendations. In fact, the trial was a trial by jury without the anomalies which in modern times distinguish the functions of this venerable and useful institution. Those who are judges of fact, and belong presumably to the same social class of the community as the prisoner before them, should also, in justice, be the best judges of the degree of culpability attached to the commission of any particular crime. With the minimum and maximum of punishment which the law permits placed before them, the jury who find the accused guilty should in equity determine the sentence to be pronounced. Modern codes relegate this power in criminal cases—not in civil causes—to the judge. The results are extremely curious; were it not for the gravity of the wrong inflicted, one might add diverting. In most

ancient penal systems the judge was regarded, and very properly, as competent to decide upon matters of fact as well as in questions of law. But the right to apportion punishment was not always conceded to him. In the best days of the Roman Republic the *Questio perpetua* presided over the trial of a criminal; but the jury—the citizen judges, numbering thirty-two, or forty, or ninety, or even a hundred—convicted the prisoner and pronounced the sentence of death. The presiding magistrates were in reality but legal assessors or advisers. In the Hebrew system such division of labour was rendered unnecessary. The members of a Synhedrin were in themselves the judges as well as the jury; and the characteristic religious bias of every Israelite, the desire to emulate the *middath rakhamin*—the heavenly attribute of mercy—was of obvious effect. It led them in every instance to place the most favourable construction possible upon the conduct of an erring brother.

CHAPTER V.

THE RULES OF EVIDENCE.

The rules of evidence, as formulated in the Talmud, are of a remarkable character. They are in most respects unlike those of any ancient legal code; and are diametrically opposed to our modern English practice in every important particular. The primary object of the Hebrew judicial system was to render the conviction of an innocent person impossible. All the ingenuity of the Jewish legists was directed to the attainment of this end. Everywhere the punishment of the guilty seems subordinated to this principal consideration. The credibility of witnesses must be established beyond doubt; their impartiality must be placed above suspicion; the likelihood of prejudice animating

any person testifying against a prisoner must be carefully sought out. The admissibility of evidence was determined by a series of stringent regulations disqualifying in each case a number of individuals from coming forward as witnesses. No man could incriminate himself; nor could a wife give evidence against a husband. (Among the Hebrews a betrothed girl was regarded by the law as a married woman.) On the other hand, a prisoner was not debarred from testifying in his own favour; any argument he wished to urge, irrespective of its legal worth, was heard by the judges. Relatives—including many allied by marriage, and nearly all those allied by blood—were incompetent to appear as witnesses. Grandchildren formed, however, an exception to this rule. Those standing *in loco parentis* to the accused at the time the alleged offence was committed or when the trial commenced; the *shushbin* —best man, groomsman—during the seven days of marriage; an enemy, *i.e.* one who

had not spoken to the prisoner for a period of three days, owing to dislike or hatred or on account of differences; a creditor; any person to whom the accused had lent money; all who publicly and derisively—*b'frase*—acted in contravention of the Mosaic laws regarding food, cleanliness, and decency; all such as had been convicted of attempting to wrong or defraud a neighbour (the Talmud regards such persons as worse than those who sin against Heaven only)—these, and all others who were disqualified from acting as judges in a cause, were declared incompetent to appear as witnesses. The rabbins carefully made allowance for human weakness and natural promptings. They did not expose relatives to the temptation of violating the sanctity of their oath; and they spared father, or son, or brother the pain of being compelled to speak the damning word which should consign, perhaps to death, one near and dear to them. Thus, the partiality of friends, the affection of

relatives, or the enmity of opponents, could in no wise affect the issues of a trial.

The mode of examining witnesses, as prescribed by the Hebrew code, is probably without a parallel. It consisted, in the absolutely essential portion, of a series of leading questions propounded by the judges. These questions were fixed by law, and no deviation was permissible. There were two sets of questions: the first, known as the Hakirah, investigation as to time and place; the second, termed Bedikah, investigation as to relevant circumstances and corroborative facts. The fundamental principle of the Jewish law of evidence was that the testimony against a prisoner should, if it be false, admit of being overthrown by proving an alibi against the witness, entailing upon the perjurer the penalty of death in all purely criminal cases. This condition was absolutely essential. It is clear that the only statements capable of being contradicted in this manner must confine themselves to de-

tails as to time and place; that is, the evidence must simply declare that the witness saw the crime committed at a certain hour, on a certain day, in a specified place. Such testimony only was considered satisfactory. The Hakiroth consisted of seven questions —never more, never less—put to each witness privately, and in the absence of other witnesses.

The appointed members of the Synhedrin, as a necessary preliminary, asked the person about to give evidence whether he actually saw the accused commit the crime with which he was charged. On receiving an answer in the affirmative the Hakiroth were put in the following order:—(1) 'In what Schemitah'—cycle of seven years, reckoning from the last Jubilee—'was the offence perpetrated?' (2) 'In what year of the Schemitah?' (3) 'In what month of the year?' (4) 'On what day of the month?' (5) 'On what day of the week?' (6) 'At what hour of the day?' and (7)

'In what place?' Replies to these seven questions were indispensable and imperative. Failure to answer any one rendered the testimony null and void. The responses thus elicited were regarded as furnishing valid and trustworthy evidence; if untrue it could be falsified by proving an alibi against the witness. Any one of these seven questions unanswered, or unsatisfactorily answered, would preclude the possibility of adopting this course in cases where perjury had been committed.

To procure the condemnation of an accused person, two competent witnesses, independent and not related, were absolutely necessary. Each must have satisfactorily replied to the Hakiroth. Agreement of the evidence offered by each was of course a *sine quâ non*. To provide, however, for mistakes into which a witness might unintentionally fall, a special series of rules was framed as to questions 6 and 4. These will presently be indicated. From the nature of the

Hakiroth it follows that to convict a criminal it was necessary that two competent persons, to all appearances unprejudiced and impartial, should have detected the offender *in flagrante delicto.*

The second set of questions, the Bedikoth, consisted of inquiries referring to circumstances connected with the commission of the crime. They were not, like the Hakiroth, limited to number. The Synhedrin might ask any number, provided they were relevant; subject, however, to the following conditions: No evidence as to the prisoner's antecedents was admitted; no previous convictions might be urged against him; no proofs of character, good or bad, were allowable. Extenuating circumstances were noted, but only by the judges. The Bedikoth were always strictly confined to details connected with the actual perpetration of the crime. For instance, in a charge of murder the judge would ask whether the witnesses had been acquainted with the per-

son assassinated; if they had cautioned the prisoner as to the gravity of the offence; if they had warned him of the punishment to which he was liable upon conviction; whether they thought the accused was himself cognizant of the serious nature of his crime; with what weapon the deceased had been slain. In cases of Paganism the inquiries would be what divinities the culprit had worshipped; what acts constituted the worship; had he prostrated himself before the images; had he offered incense to the strange gods; had he immolated sacrifices in their honour, or poured out libations upon the forbidden altars. In no case was a witness permitted to make a statement for or against the accused. The evidence was strictly confined to replies elicited in response to leading questions from the judges. Hearsay and presumptive evidence was rejected as worthless; and circumstantial evidence was inadmissible. In the Bedikoth it was of course requisite that the statements of the witnesses

should agree in all essential details; but it was enough if the main facts coincided. If, for instance, a witness in a case of murder testified that the criminal was attired in a black coat, and another asserted he was at the time dressed in a white coat, their evidence was admitted. If, however, one said the murder was committed with a spear and the other with a knife, their evidence was rejected; there was a material contradiction of a material fact. So, too, in a civil cause, if one witness swore that a certain sum of money was contained in a blue bag, and another said it was a red bag, the testimony was good. If, however, one asserted the sum to have been a thousand pieces of silver and the other two thousand pieces, the evidence of both was set aside. Probability was never considered by Hebrew judges. The Jewish lawyers, moreover, held fast by the Mosaic injunction that two or more credible witnesses were required in every case. Where a marked discrepancy was

apparent in the testimony of two persons, one account alone could be deemed trustworthy. There was, as the rabbins reasoned, but one credible witness in such a case; and the Mosaic condition was not fulfilled. The examination of witnesses was conducted in private by judges deputed for that purpose. All testimony not in accordance with the laws of evidence was immediately declared inadmissible; it could not be deposed to in full court. Hence, in all cases where discrepancies were discovered during the preliminary investigation, the statements of the witnesses were not submitted to the judges. There was therefore no possibility of the Synhedrin being prejudiced or influenced by any testimony that failed to satisfy the rules of evidence.

We have said that in the case of the Hakiroth—questions as to time and place—it was indispensable that the statements furnished by two witnesses should coincide. Discrepancies in the respective answers given

in reply to any one question would necessarily invalidate the whole of the evidence brought forward. But such non-agreement in the responses elicited must have been sufficiently marked to constitute a definite disaccord, an unmistakable contradiction. But, of course, the rabbins were aware that stupidity or unintentional error might account for trifling differences of statement. That any such unimportant variations should not bring about a miscarriage of justice, certain rules were framed applicable to questions 4 and 6, regarding the day of the month and the hour of the day. Among the Hebrews the number of days in a month was not fixed. Sometimes a lunar month consisted of twenty-nine, occasionally of thirty days. When the new moon was announced the public were likewise informed how many days the month would include. If a man happened to be absent when the *hodesh*—new moon—was proclaimed, he might easily go astray in his reckoning. He might have forgotten

whether the preceding month consisted of twenty-nine or of thirty days; as a result he might be in error to the extent of a day. Accordingly the law enacted that, provided the replies of the witnesses coincided in all other respects, a day's difference in the two answers to question 4 should not invalidate the evidence. If, therefore, one asserted that the crime was committed on the first of the month and the other on the second, the testimony held good. But if the former said the second of Nissan and the latter the fourth of Nissan, the evidence was altogether void. A man, urges one of the rabbins, might perhaps make a mistake two months running. To this, however, the majority demur. A conscientious person was not to be lightly suspected of having on two successive occasions neglected the performance of what was regarded as a religious duty. Again, a mistake might easily be made when replying to question 6, that is regarding the

hour of the day. The sun was the town-clock in those times ; an error in respect of an hour, or even two, was by no means impossible. Accordingly, the rules of evidence permitted of a difference or discrepancy of two hours in the respective answers to the Hakiroth. But this was not permissible if the two hours specified were between what to moderns would be eleven in the morning and one o'clock in the afternoon. Here such non-agreement was not allowable. No Eastern was likely to mistake the position of the sun about noon to the extent of two hours.

Such, briefly summarised, are the principal injunctions of the Talmud regulating the admissibility of evidence and the qualifications of witnesses, and specifying the mode of examination. They were calculated to simplify procedure, expedite justice, prevent undue pressure of judicial authority, and, more than all, render impossible those 'hard constructions and strained inferences'

of which Bacon so eloquently bids judges beware.

A sketch of the proceedings in a capital trial will illustrate the practical application of the laws we have already described.

CHAPTER VI.

FORM OF TRIAL IN CAPITAL CASES.

A CAPITAL trial was conducted with all the solemnity of a religious ceremony. The exercise of judicial functions was at all times regarded as a sacred privilege ; and the responsibility incurred in criminal cases was ever present to the Hebrew mind. 'A judge,' says the Talmud, 'should always consider that a sword threatens him from above, and destruction yawns at his feet.' Rising betimes in the morning, the members of the Synhedrin assembled after prayers in the Hall of Justice. Pending the arrival of the culprit and the preparations for the trial, they commented among one another on the serious nature of the duties they were called upon to discharge. The judges were so arranged as

to sit in a semicircle. Immediately in front of them were three rows of disciples. Each row numbered three-and-twenty persons. Thus every judge was assisted by three juniors. These disciples were not young and inexperienced students, but were many of them in no wise inferior to the members of the court itself. Any vacancies in the first row were filled up from the second ; any required in the second were supplied from the third rank ; and the third was recruited from the number of learned men to be found in every place having a permanent Synhedrin. Three scribes were present ; one was seated on the right, one on the left, the third in the centre of the hall. The first recorded the names of the judges who voted for the acquittal of the accused, and the arguments upon which the acquittal was grounded. The second noted the names of such as decided to condemn the prisoner and the reasons upon which the conviction was based. The third kept an account of both the preceding,

so as to be able at any time to supply omissions or check inaccuracies in the memoranda of his brother reporters. The culprit was placed in a conspicuous position, where he could see everything and be seen by all. Opposite to him and in full view of the court were the witnesses. Thus constituted and arranged, the Synhedrin commenced its investigations.

The procedure in a capital trial differed in many important respects from that adhered to in ordinary cases. In an ordinary case the discussions of the judges commenced with arguments for or against the accused; in a capital charge it could only begin with an argument urged in behalf of the prisoner. In an ordinary case a majority of one was sufficient to convict; in a capital charge a majority of one could acquit, but a majority of two was necessary to condemn. In ordinary cases judgment pronounced could always be annulled upon discovery of an error; in capital cases the decision was irrevocable once the

accused had been declared innocent. In ordinary cases the disciples present could offer opinions for or against either party; in a capital trial they were only permitted to suggest arguments in favour of the culprit. The judges in ordinary cases could change their opinion prior to giving the final and collective decision; but in a capital charge they were only permitted to change if at first they had intended to vote for a conviction. An ordinary trial, if commenced in the morning, might be continued during the evening; in a capital issue the proceedings must cease and the sitting be suspended at sunset. An ordinary charge could be heard and adjudicated upon in one day; in a capital case a prisoner could be acquitted the same day as he was tried, but sentence of death could not be pronounced until the following afternoon. Lastly, in ordinary cases, the judges voted according to seniority, the oldest commencing; in a capital trial the reverse order was followed. That the younger members of the

Synhedrin should not be influenced by the views or arguments of their more mature, more experienced colleagues, the junior judge was in these cases always the first to pronounce for or against a conviction.

As soon as the Synhedrin was ready the examination of the witnesses commenced. The first who was to give evidence was taken into an adjoining chamber and carefully admonished. He was asked if he had not perchance founded his conviction of the prisoner's guilt upon probability, on circumstantial proof, or by hearsay; whether he was not influenced in his opinions by persons whom he regarded as trustworthy and reputable. Did he know he would be submitted to a searching and rigorous examination? and was he acquainted with the penalty entailed by perjury? The most venerable of the judges then addressed the witness, solemnly adjuring him to truthfulness. 'Do you know,' said the rabbin, 'the difference between a civil and a criminal case? In the former case an error is always

reparable; restitution can always be made. But in the latter an unjust sentence can never be atoned for; and you are responsible for the blood of the condemned and all his possible descendants. For this reason God created Adam — whose posterity fills the earth—alone and sole, in order that we might understand that he who saves a single soul is as though he saved an entire world; and he who compasses the destruction of a single life is as though he had destroyed a world. That the Almighty formed but one man in the beginning is moreover intended to teach us that all men are brethren, and to prevent any individual from regarding himself as superior to a person belonging to another nation. Nevertheless,' continued the judge, 'if you witnessed the crime and conceal the facts you are culpable. Have no fear therefore of the responsibility you incur; and remember that as a city rejoiceth when the righteous succeed, so doth a town shout when they that wrought wickedness are punished.'

Upon the conclusion of this exhortation the examination commenced. The Hakiroth, questions as to time and place, were put to each of the witnesses, and subsequently the Bedikoth, inquiries relative to the commission of the crime. As soon as the answers constituting the evidence against the prisoner had been received they were submitted to the Synhedrin. The consideration of the case was thereupon proceeded with. As we before pointed out, the rebutting testimony could only be directed against the Hakiroth by proving an alibi against one or both of the witnesses. If the accused succeeded in so doing he was of course at once acquitted. If there was a marked discrepancy in the Bedikoth—sufficient, in fact, to render the statements of the witnesses contradictory—the trial equally of course immediately terminated. There would be, under the circumstances named, no evidence legally admissible; no valid testimony to lay before the Synhedrin. Supposing, however, the facts elicited from

the witnesses were such as could be brought into court in support of the charge, then the tribunal commenced the discussion preliminary to voting.

The deliberations could only begin with an argument in favour of the accused. Nothing was therefore urged until one of the judges found some fact or facts telling against the prosecution. The member of the Synhedrin then rose and, alluding to the circumstances, said: 'According to such and such a statement, it appears to me the prisoner must be acquitted.' The discussion thereupon became general. Every item of evidence was carefully overhauled; each of the answers given by the witnesses was subjected to minute criticism. Apparent inconsistencies were dilated upon, and extenuating facts pleaded. The culprit himself was permitted to urge anything in his own favour or against the evidence of the prosecution. If a disciple found a cogent or valid argument on behalf of the prisoner, he was placed among the judges, and regarded as a

member of the court during the entire day. If, on the other hand, one of the disciples noticed anything calculated to injure the defence, he was not permitted to call attention thereto. As soon as the discussion terminated the preparations for recording the votes commenced. The scribes were ready, and each judge, beginning with the youngest, pronounced his decision for or against the accused. At the same time each stated the facts upon which his conclusion was grounded. The observations of the members were carefully recorded and preserved. As soon as the whole of the Synhedrin had voted, the numbers were announced. If eleven convicted and twelve acquitted, the prisoner was without delay discharged, a majority of one voice being sufficient for this purpose. If twelve convicted and eleven acquitted, the accused could not be condemned, a majority of at least two being required. In such a case the following expedient was adopted: two additional judges were added, these being

selected from the first row of disciples. Voting then recommenced. If a majority of two against the prisoner was thus obtained he was convicted. If not, the process of increasing by twos the number of the Synhedrin continued until the requisite preponderance was gained. Should the tribunal by this means come to consist of seventy-one members, of whom thirty-six voted for a conviction and thirty-five against, the matter was reargued until one of the former gave way and declared in favour of an acquittal. Should the six-and-thirty adhere to their opinions the prisoner was discharged. If at the original voting thirteen members of the Synhedrin decided to convict, or if after the subsequent additions a majority of two was obtained in favour of the same course, the accused was found guilty. Sentence, however, could not be pronounced until the following afternoon. The sitting was therefore suspended until next morning.

In such cases, that is, when sentence of

death appeared inevitable, the Synhedrin adjourned immediately the majority that determined a conviction was announced. Slowly the members quitted the hall wherein the trial had been conducted. Gathering in knots of three and more, they remained for some little time in the street discussing among themselves the misfortune impending over their city—for as such all Hebrews regarded the execution of a fellow man. Gradually the groups broke up; the judges proceeded to their homes. They ate but a small quantity of food, and were not permitted to drink wine during the remainder of the day or evening. After sunset they made calls upon each other, again debating the various arguments adduced during the trial. At night each retired to his chamber and gave himself up to meditation; or so it was believed. The knowledge that a life—a life declared by their traditions to be equal to a world—depended upon their verdict would lead them to ponder upon the judgment of the morrow.

There was yet time to reconsider the sentence, time to recall a decision that a few hours would render eternally irrevocable. Rising early in the morning, they returned to the house of justice. Not one was permitted to partake of food. The day that condemned an Israelite to death was a fast-day for his judges. Meeting in the hall of assembly the members of the Synhedrin with their disciples were arranged as on the preceding morning. The witnesses were again present; the criminal was brought in. The scribes seated themselves, and the proceedings commenced. One by one each judge in succession pronounced his decision; again each repeated the arguments upon which it was based. The scribes, tablet in hand, compared the statements now made with those recorded on the previous day. If any member of the tribunal, voting for a conviction, founded his judgment upon reasoning materially opposed to that he before urged, his verdict was not accepted. One who had resolved to acquit on the pre-

ceding day was not permitted to change his determination. But any one who had decided to convict might, upon furnishing the Synhedrin with the arguments inducing him so to do, vote on this occasion in favour of an acquittal. Again the number for and against the accused was announced. Still the sentence was deferred. The prisoner might bethink himself of some valid plea in extenuation of his crime; unexpected witnesses might be forthcoming; the Synhedrin might produce some favourable arguments. Slowly the sun gained the meridian. Still the court sat; none thought of quitting the hall of judgment. Gradually the sun declined and evening drew nigh. There was to be no interval between sentence and execution; the hour that heard the doom pronounced would see it carried into effect. Sunset was the time fixed for both. As the afternoon wore on the doors of the court were opened. A man stationed himself at the gate, carrying in his hand a flag. In the distance was a horse-

man, so placed as to perceive readily the least movement or agitation of the bunting. With a solemnity becoming the occasion, the Synhedrin, after praying that they might commit no sin thereby, decreed the punishment of death. Accompanied by two rabbins, the convict was led to the place of execution without the walls. Hope was not even yet abandoned. If one of the judges bethought him of an argument in favour of the criminal the flag at the door was raised and the mounted messenger prepared for such an emergency galloped forward to stop the execution. If the culprit requested to be reconducted to the court, he was taken back as often as he furnished any valid excuse. The Synhedrin sat until the hazan—messenger of the court—returned with a notification that the condemned man was no more. Again uttering a prayer that the judgment that day pronounced might not have been in error, the members rose and silently quitted the hall of justice.

CHAPTER VII.

THE VARIOUS METHODS OF EXECUTION.

THE rabbins were the first among ancient legists to render the infliction of the death-penalty as painless as possible. The manner in which the sentence of the law in capital cases was carried into effect was regulated by a series of enactments. Every detail was preordained. The place of execution was always beyond the limits of the town ; generally at some distance from the hall where judgment had been pronounced. There were two reasons for this—first, that a certain interval of time should elapse between sentence and execution so as to permit the court to examine any evidence that might yet be forthcoming ; and, secondly, that the Synhedrin should not witness the execution. As soon

as the punishment of death was decreed, the criminal was conducted from the court. Two elders, the witnesses, and the officers of the tribunal accompanied him. In advance of the cortége walked an attendant, proclaiming aloud, 'So-and-so is to be executed for such-and-such an offence; so-and-so are the witnesses; the crime was committed at such a place, on such a day, at such an hour. If any person can urge anything against the infliction of the punishment, let him go to the Synhedrin now sitting and state his arguments.' Thus the party proceeded through the town. Arrived within six yards of the place of execution the sages who were with the condemned man pressed him to confess his crime. They told him that whosoever makes confession is privileged to share in the *olam haba*—future existence; since death was an expiation for all iniquities. If he refused to acknowledge his guilt he was asked to say, 'May my death prove an atonement for all my transgressions.' He was then conducted

to within four yards of the place where the sentence was to be carried into effect. The death-draught was here administered. This beverage was composed of myrrh and frankincense (*lebana*), in a cup of vinegar or light wine. It produced in the convict a kind of stupefaction, a semi-conscious condition of mind and body, rendering him indifferent to his fate and scarcely sensible to pain. The drink was—in Jerusalem—provided by the women, who considered this one of the greatest *mitzvoth*—meritorious deeds. In provincial towns the local communal authorities were required to furnish the criminal with the draught; the ingredients were purchased at the public expense. As soon as the culprit had partaken of the stupefying draught the execution took place.

In accordance with the Mosaic code four kinds of death were inflicted, each appropriate to a distinct series of crimes. These were stoning, strangling, burning, and decapitation. Nothing can be more absurd than

the notions generally current respecting the manner in which these punishments were carried out among the Jews. The stoning of the Bible and of the Talmud was not, as vulgarly supposed, a pell-mell casting of stones at a criminal; the burning had nothing whatever in common with the process of consuming by fire a living person as practised by the churchmen of the Middle Ages; nor did the strangling bear any resemblance to our English mode of putting criminals to death.

The stoning to death of the Talmud was performed as follows:—The criminal was conducted to an elevated place, divested of his attire if a man, and then hurled to the ground below. The height of the eminence from which he was thrown was always more than fifteen feet; the higher, within certain limits, the better. The violence of the concussion caused death by dislocating the spinal cord. The elevation was not, however, to be so high as to smash or greatly disfigure the

body. This was a tender point with the Jews; man was created in God's image, and it was not permitted to desecrate the temple shaped by Heaven's own hand. The first of the witnesses who had testified against the condemned man acted as executioner, in accordance with Deut. xvii. 7. If the convict fell face downward he was turned on his back. If he was not quite dead, a stone, so heavy as to require two persons to carry it, was taken to the top of the eminence whence he had been thrown; the second of the witnesses then hurled the stone so as to fall upon the culprit below. This process, however, was seldom necessary; the semi-stupefied condition of the convict and the height from which he was cast ensuring in the generality of cases instant death.

The bodies of those condemned for blasphemy or idolatry were subsequently hung upon a gallows until dusk. Immediately after execution the corpse was interred. Outside every town there were two cemeteries

for criminals—one for those sentenced to be stoned or burned ; one for those decapitated or hanged. As soon as the flesh had disappeared the skeleton could be removed to the family burying-place. A few days after an execution the friends and relatives of the dead man—he was no longer regarded as an offender—called upon the judges who had tried him. This was a tacit acknowledgment that the punishment had been justly awarded, and that those charged with the administration of the law were regarded with no revengeful feelings by the family and connections of the unfortunate man.

Death by stoning was the penalty of the following crimes : adultery of an unnatural character ; blasphemy and any form of idolatry ; public profanation of the Sabbath ; cursing parents (which must include blasphemy) ; the practice of *Ob* and *ydoni*—presumably a form of idolatrous sorcery ; criminal assault upon a Na'arah (a young girl not yet of full age—one of mature years is termed in the

Talmud *bagroth*); any person seducing another to idolatry; and a stubborn and rebellious son. Some other offences specified in the Pentateuch were also punished by stoning.

A criminal sentenced to death by burning was executed in the following manner. A shallow pit some two feet deep was dug in the ground. In this the culprit was placed standing upright. Around his legs earth was shovelled and battered firmly down until he was fixed up to his knees in the soil. Movement on the part of the condemned person was of course impossible; but care was taken that the limbs should not be painfully constrained. A strong cord was now brought, and a very soft cloth wrapped round it. This was passed once round the offender's neck. Two men then came forward; each grasped an end of the rope and pulled hard. Suffocation was immediate. As the condemned man felt the strain of the cord, and insensibility supervened, the lower jaw dropped. Into the mouth thus opened a lighted wick was quickly

thrown. This constituted the burning. After death ensued the body was buried in the cemetery for criminals. This manner of death was prescribed by an injunction of the Pentateuch for those committing adultery in certain specified cases—notably where the married daughter of a priest was found guilty of the crime.

Decapitation was performed by the Jews after the fashion of the surrounding nations. It was considered the most humiliating, the most ignominious and degrading death that any man could suffer. It was the penalty in cases of assassination and deliberate murder. It was incurred by those who wilfully and wantonly slew a fellow-man with a stone or with an implement of stone or iron. It was likewise the punishment meted out to all persons who resided in a town the inhabitants of which had allowed themselves to be seduced to idolatry and paganism.

Strangulation was a form of death by suffocation. It was effected as in burning.

The culprit stood up to his knees in loose earth. A soft cloth containing a cord was wound once round his neck. The ends being tightly pulled in opposite directions, life was soon extinct. This mode of death was the punishment of one who struck his father or his mother; of any one stealing a fellow-Israelite; of a false prophet; of any one committing adultery (as we understand this crime nowadays); and of the elder or provincial judge who taught or acted contrary to the decision of the Great Synhedrin of Jerusalem.

It has before been said that in certain cases the bodies of malefactors were hung after execution. The reverence for the dead characteristic of the Rabbins, is nowhere more markedly apparent than in the manner in which this Mosaic ordinance was carried out. A beam was embedded endwise in the ground. From it a branch of wood projected like an arm. This extended above the place where the corpse was lying. The two hands

of the deceased were tied together, and the culprit thus suspended. According to an express injunction of the Pentateuch, the body of a criminal was not permitted to hang during the night; it had to be removed at sunset. Now sentence was invariably pro nounced towards evening, and execution immediately followed. In any case, therefore, the corpse could not have been suspended for many minutes. The Talmud however further enacted that whenever the body of a criminal was to be subjected to the indignity of exposure in this fashion two men were to undertake the duty. One was to suspend the deceased on the extemporised gallows, the other to take down the corpse; and while the former was engaged in tying the last cord by which the malefactor was to depend from the projecting limb, the latter was to commence to unbind the first. The body was thus but a moment exposed to the indignity, and yet compliance was made with the letter of the law. Under no circumstances was the corpse

of a criminal suffered to remain unburied until the day after death.

The *arba mithoth beth-din* — the four deaths decreed by the courts of justice—as herein described, are the only modes of execution in accordance with Hebrew law. Crucifixion, as practised by the Romans and Carthaginians, is unknown to the Scripture—equally unknown to the penal enactments of the Talmud. Horrible and unnatural punishments, such as those prescribed by the Egyptian laws in cases of parricide and seduction with violence, were unknown to the Jews. Boiling criminals alive in oil, as practised by more than one ancient nation ; burying alive, not by any means unknown to the Romans—nay, the disembowelling and quartering of our last-century executions—would have horrified a Jewish Synhedrin, who would have regarded such outrages upon the dignity of man's body as, in their own expressive phrase, a *hillul hashem,* a public desecration of the Godhead. 'We are enjoined

to love our neighbour as ourselves, says Nahman in the name of Rabbah, the son of Abouhou, 'and therefore it is our bounden duty always to endeavour to mitigate by every means possible the sufferings of a fellow-creature condemned to death.'

CHAPTER VIII.

WHAT CONSTITUTED MURDER—ADULTERY AND ITS PUNISHMENT—IDOLATRY.

THE whole of the crimes already enumerated as entailing the penalty of death are practically but varieties of three offences only—murder, adultery, idolatry. To these must be added the case of an elder who taught contrary to the judgment of the Great Synhedrin of Jerusalem. Murder, the first of these and the most serious everywhere, is carefully discriminated in the Talmud. Under certain conditions only was it punished with death. To explain this fully we must ask the question, What constitutes murder according to the Hebrew penal code?

To constitute murder it was necessary to prove malice and intent. In the words of the Bible the criminal must have 'hated his

neighbour from heretofore ;' and as regards the commission of the offence, he must have 'lain in wait' for his victim in order to slay him. The malice and intent were to be actual and demonstrable. Neither of these essential conditions was to be presumed or inferred from the mere circumstance of an offence having been perpetrated. The English legal figment of constructive malice, like constructive murder, was undreamed of by the Hebrew legists. To convict capitally, as our criminal code can, a man who shoots at a fowl perched on a hedge, and accidentally kills some person hidden behind it, would have seemed to the rabbins an act of the grossest inhumanity. Only when the crime was assassination, deliberate and premeditated, was sentence of death pronounced.

Before proceeding further it is necessary to refer here to the remarkable enactment of the Talmud, known as the 'preliminary caution.' As already pointed out, this ordinance of the Mishnic doctors required that, in order

to secure a conviction in certain cases, proof had to be forthcoming that the witnesses had warned the accused prior to the commission of the offence with which he was charged, and informed him of the gravity of the crime he contemplated and the penalty attached to its perpetration. M. Rabbinowicz, as we before observed, regards this injunction of the rabbins as designed to abolish altogether the penalty of death. He thinks that in a case of assassination failure of evidence to prove that the culprit had received this 'preliminary warning' would constitute one of the extenuating circumstances which evitate capital punishment. We venture to think that M. Rabbinowicz misapprehends the real purpose and intent of this curious proviso.

In the first place, an important *beraitha* declares in the words of Jossé, the son of Judah, that the only object of this enactment was to prevent the condemnation of a person ignorant of the gravity of the offence he had committed. He adds that in the case of a

properly instructed man, proof of the 'preliminary caution' was not necessary in order to procure a conviction. Again, the Talmud emphatically declares that an acquittal contrary to an explicit injunction of the Pentateuch, or written law, had to be annulled. Now, the Mosaic code constantly assumes that every man is cognisant of the penal provisions of the Bible. The Talmud always acts upon this assumption; notably in the enactments respecting the contumacious elder. Every Jew is supposed to know what constitutes murder, and what is the penalty incurred thereby. The Pentateuch says nothing of any preliminary caution whatever. In a case of premeditated and wilful assassination, proved by witnesses in accordance with the rules of evidence, an acquittal grounded upon this provision of the rabbins only, would be manifestly opposed to the letter and spirit of the written law. Such a judgment would therefore, as the *beraïtha* expressly states, be illegal and void. The

real object and intention of the preliminary warning will be presently indicated.

Ordinary cases of murder (*i.e.* not assassination under the circumstances above mentioned) were punished with imprisonment for life or perpetual seclusion. Here the absence of long-harboured malice, nourished enmity, and premeditated design constituted valid arguments against a capital conviction. Assassination, clearly proved, but not witnessed by persons qualified to give valid evidence, was also punishable in the same way. In every charge of murder (common homicide) it was indispensable to prove that the conduct or action of the culprit was the direct cause of death. The intent of the deed, the design of the prisoner at the moment of committing the crime to take away life, must be incontrovertibly demonstrable and clearly established. As a contributory, or as one among many others who slew a man, he could never be convicted of murder. For instance, a man and his neighbour quarrelled

and fought. The former threw his opponent into a ditch. There was a ladder in it at the time, by which any one could have got out. The man above walked away. Another passed by, and, seeing a ladder leading into the ditch, removed it. The person below could not escape, and perished in consequence. Under such circumstances, a charge of murder could not be maintained against the man who had thrown the deceased person into the *fosse* where he died. This leading case embodies the principle throughout adhered to by Hebrew legists. Constructive murder was unknown to the Jewish judges. This palpable absurdity still disfigures the pages of our English code. Five men are engaged, say, in the unlawful enterprise of robbing an orchard. The owner or one of his watchmen enters. A squabble ensues. One of the thieves throws a stone, which accidentally injures the owner or the watchman, who dies in consequence of the hurt received. The man who cast the missile and unintentionally

caused the mischief is perhaps known. Yet, despite this fact, the whole five could be found guilty of murder, and hanged! Such a conviction was impossible according to the Talmudic laws. If three, five, or any number of men attacked a single person and slew him, only the assailant whose hand actually inflicted death could be found guilty of murder. Where, on the other hand, the man who actually killed the victim could not be distinguished among the others, all of them were imprisoned for a fixed period, and could be compelled to support the family of the deceased person. The perpetual incarceration of a murderer had nothing in common with the modern systems of penal servitude. M. Rabbinowicz, with much discrimination, contrasts the seclusion of a convict as ordained by the Hebrew code for the protection of society and such systems of life-long incarceration as prevail in our own time. The mere deprivation of liberty was considered by the Rabbins the severest punishment a

human being could undergo. The penalty of murder is, in the characteristic phrase of the Talmud, that the murderer 'be put in prison; and they give him the bread and water of misery.'

Adultery was, as stated, punishable with death. To secure a conviction, it was imperative that evidence be adduced conclusively showing that two witnesses had cautioned the accused of the gravity of the crime he or she was about to commit. In connection with this offence the primary and real intention of the preliminary warning insisted upon by the Talmud will be clearly understood. In other crimes men alone, as a rule, were the culprits. In adultery women would necessarily come prominently before the Synhedrin as the accused. Now, a vast amount of nonsense has been written regarding the position of females among the Hebrews. Argument ample and instance abounding have been produced to demonstrate the light esteem in which women were held by

the Jews. A deal of misdirected ingenuity has been applied to refuting these assertions. Like the *lex talionis*, the subject has never been properly explained. The Talmud is no orderly digest or methodised summary of laws such as moderns are accustomed to. It is a veritable garden of wild growths; a luxuriant wilderness. Argument and dicta and enactment and proverb and legend are mixed and commingled in a harmonious confusion. It requires some amount of dexterity to pick one's way. Throughout this medley women are regarded from two points of view—the legal and the social. The references to women require, therefore, to be sorted and strung together in two separate series. As to the social position of women, a few quotations will suffice to show the high regard in which they were held. 'The verse in the Book of Job (v. 24), which says "thou shalt see prosperity in thy tents" refers,' explains the Talmud, 'to him who, loving his wife as himself, has more regard for her honour than

for his own!' The Rabbi Johanan says, 'he who has the misfortune to lose his wife, is as though he had witnessed the destruction of the Temple. For sacred writ does not disdain to figure in the death of Ezekiel's wife the overthrow of the holy edifice.' The learned Samuel, the son of Ṇahaman (who lost his first spouse when very young), declares 'that all things may be replaced; but never the wife of one's youth.' Rabbi Eleazer adds: 'The altar itself weeps when a man divorces his wife.' These sayings will suffice to indicate that socially women were regarded with the highest respect and esteem. But legally their status was undeniably inferior to that of men. A woman was not in certain lawsuits permitted to give evidence. She was regarded as one uninstructed; one unversed in the law. But mark how this worked. When a woman appeared before the Synhedrin, charged with adultery, she was presumably ignorant of the gravity of the offence she had committed, and unaware

of the penalty entailed thereby, unless evidence *to the contrary* was forthcoming. To condemn an untaught person was opposed to the principles of Talmudic laws. In order, therefore, to convict an adulteress it was indispensable, owing to her legal position, that competent witnesses should have warned her prior to the commission of the crime of its serious character and its punishment. Such testimony was not likely to be produced in these cases. Its absence declared the accused not responsible for the offence. The enactment of the 'preliminary caution' was therefore an argument in favour of the acquittal of a woman charged with any crime, notably with adultery. This may all seem very strange—perhaps not quite credible; but it is true, nevertheless.

Idolatry was considered the most heinous offence of which a Jew could be guilty. Among a people professing a monotheistic faith, hedged in by nations given to every form of paganism, prone to abominations of every

kind, it was thought necessary that any public desecration of religion should be severely punished. Every Jew was perfectly well acquainted with the grand principle of his creed, the *a'hidus hashem*—the unity of the godhead, and the spirituality of the Creator. Every Hebrew knew that idolatry in each and every form was an utter abomination in the sight of heaven. Hence in such cases ignorance could not be pleaded in extenuation of the crime; nor was any preliminary warning requisite in order that judgment of death might be legally pronounced. In ordinary affairs, as in the more serious matters capitally punishable, the Hebrew code did not permit of any sort of detective system. A man was not permitted to secrete himself in order to watch his neighbour. A witness who had acted in such a manner would not have been permitted to give evidence. When, however, a Jew was believed to have publicly devoted himself to idolatry, and to have endeavoured to seduce his neighbours

to the same practices, any ruse was permitted for the purpose of demonstrating his guilt. If, for example, he declared to one person only that in such and such a grove an image was erected, and attempted to persuade him to join in worship there, the latter was permitted to hide a friend wherever convenient, and calling the idolater, might say to him, 'Now tell me more about that image you worship.' If the backslider repeated his solicitations the testimony of the two witnesses was procured, which was necessary for condemnation. But previous to laying the matter before a Synhedrin it was imperative upon both these witnesses to reason with the idolater. They were, according to the Talmud, to speak kindly with him. They should address him and say: 'How! would you have us forsake our God who is in heaven to follow deities who are made of wood and stone?' If the erring brother gave ear to their exhortation and quitted his pagan practices, the witnesses who knew of his backsliding were

not permitted to mention the fact to any neighbours or friends. 'He who repents must never be reminded of his former iniquities.' But if obstinately bent on worshipping the image he had found and set up for himself, the depositions as to the circumstances were laid before the tribunal. These facts were, however, only sufficient to found an accusation upon. To convict it was necessary to prove that the offender was really given to the pagan practices to which he endeavoured to persuade his brethren. Similarly, in the case of a simple idolater it was requisite to prove more than mere adoration of an image or prostration before it, or dressing and tending it. It must be shown that he acknowledged it verbally as his divinity, and immolated sacrifices or offered incense in its honour. This was essential in order to constitute idolatry punishable with death.

The remaining capital offence—disobedience to the judgment of the great Synhedrin of Jerusalem—has been already referred to.

The penalty was necessary in this case, not solely on account of the mischief resulting from an elder or judge, having influence and authority, acting and inducing others to act contrary to tradition, but for another reason. It must be borne in mind that the Synhedrin at Jerusalem was the parliament of the nation, and disregard of its authority was, in point of fact, a political crime equivalent to high treason. An execution for such an offence could only take place in Jerusalem; and only during the celebration of one of the Shalosh Regalim—three great festivals of the year—when every male came up to the capital. By this arrangement the injunction of the Pentateuch was fulfilled (Deut. xvii. 13), and 'All Israel heard.'

Two other punishments are prescribed by the Hebrew code: internment in a city of refuge, and flogging—the former for accidentally killing a neighbour; the latter for a large number of serious offences. These we shall now proceed to discuss.

CHAPTER IX.

CITIES OF REFUGE—THE PUNISHMENT FOR PERJURY—FLOGGING.

Homicide by misadventure—that is, the accidental killing of a fellow-man—entailed upon the offender the penalty of internment in a city of refuge. The slaying of a neighbour by mischance was not, however, regarded as a crime properly so-called; nor does the Talmud consider the penalty thereby incurred in the light of a punishment. The Pentateuch, in common with all ancient legal systems, recognised the right of private vengeance in cases of murder and manslaughter. The family, relatives, and connections of the deceased could slay the culprit, wherever discovered. But most nations arranged the matter satisfactorily by a pecuniary payment. The Athenians, for example, placed the nego-

tiations for this purpose in the hands of the Ephetes. This was a progressive step. The Mosaic code went further. It abolished the blood-money altogether; but this left the offender at the mercy of those who were entitled to avenge the death. Recollecting probably his own misadventure with the Egyptian whom he accidentally slew, and his compulsory flight in consequence, Moses provided in his legislative scheme for the establishment of cities of refuge. To these the Hebrew who by mischance killed his neighbour was permitted to proceed. Here he was in safety—secure from the vengeance of the *Go'el hadam*, the 'redeemer of the blood.' The arrangement was, therefore, rather in the nature of a privilege than a punishment.

Internment in one of the cities of refuge was not the scampering process depicted in the popular engraving: a man in the last stage of exhaustion at the gate of an Eastern town; his pursuers close upon him, arrows fixed and bows drawn; his arms stretched imploringly

towards a fair Jewish damsel with pitcher gracefully poised upon her head. This may be extremely picturesque, but it is miserably unlike the custom in vogue among the later Hebrews. Internment in a city of refuge was a sober judicial proceeding. He who claimed the privilege was tried before the Synhedrin like any ordinary criminal. He was required to undergo examination; to confront witnesses; to produce evidence, precisely as in the case of other offenders. He had to prove that the homicide was purely accidental; that he had borne no malice against his neighbour; that he had not lain in wait for him to slay him. Only when the judges were convinced that the crime was homicide by misadventure was the culprit adjudged to be interned in one of the sheltering cities. There was no scurrying in the matter; no abrupt flight; no hot pursuit, and no appeal for shelter. As soon as judgment was pronounced the criminal was conducted to one of the appointed places. He was accompanied

the whole distance by two *talmidè-chachamim* —disciples of the rabbins. The avengers of the blood dared not interfere with the offender on the way. To slay him would have been murder, punishable with death. The cities of refuge were six in number—three on this side Jordan, three on the other. They were so situate as to be almost opposite each other. Hebron in Judah, over against Bezer in the Wilderness; Sechem in Ephraim, against Raamath Gilead; Kadesh Naphthali, against Golan. These places divided Palestine into four equal portions, being so arranged that the distances from the southern boundary to Hebron, from Hebron to Sechem, from Sechem to Kadesh, and from Kadesh to the northern frontier, were nearly identical. There were excellent roads from one to the other; at intervals signposts were erected indicating the way to the nearest city of refuge. Arrived at whichever of these he had selected, the conductors handed the offender into the charge of the Levites.

These allotted to him a dwelling place. He was in every respect free ; but not permitted to go beyond the boundaries of the territory pertaining to the town. Here he remained until the death of the high priest. Whenever this occurred he was at liberty to return to his home. The Hebrew who had the misfortune to slay accidentally a fellow man could likewise seek refuge, temporarily, in any one of the forty-two levitical cities of Palestine.

The Talmud distinguishes two kinds of accidental homicide—one where the death is due to the conduct or negligence of the accused only ; the other, where the deceased contributed thereto by some act of his own. For instance, a man is engaged building a house in a public street ; he is carrying a heavy stone on to the roof. This falls upon a neighbour passing below and kills him. The victim here is not to blame. In such a case the culprit would have been interned in a city of refuge. Again, a person is occupied

in repairing an edifice situated in a private court to which no one but the owner has the right of access. A stranger enters; as he does so a stone falls and kills him. In a case like this the deceased was considered as having contributed to his own death; and no punishment whatever followed. A father who chastised his son and undesignedly killed him; a teacher who punished a pupil and unintentionally caused his death; and the person who, by order of the Synhedrin, inflicted corporal punishment upon a culprit, which unfortunately terminated fatally—these likewise were not interned in a city of refuge. The reason of these three exceptions in the application of this law is self-evident. But in all other cases of homicide coming under the category before mentioned, where the victim was not a contributory to his own death, the penalty was enforced. A noteworthy exception is, however, found in the Talmud. There resided among the Jews a great number of so-called proselytes of the gate—strangers

who had in all essentials adopted the Hebrew faith. If one of these by misadventure killed an Israelite he was not conducted to any of the six cities, but was sent back to his native country. The motive here is sound and practical. The internment in a city of refuge lasted, as before said, until the demise of the high priest. If this sacred functionary was a younger man than the offender, the latter would probably have been exiled from home and family during the whole of his lifetime. Better, therefore, urged the Rabbins, that he return at once to his native land, safe from the pursuit of those entitled to exact vengeance for the crime he had by misadventure committed. And so in the case of a Hebrew accidentally killing a resident—a *gher thoshab,* as the rabbins term him—internment was considered unnecessary. There were no relatives in Palestine to avenge the death of the sojourner; no useful purpose could therefore be served by exiling the culprit from his home for a number of years. In the case of

a high priest dying after the condemnation of a criminal, but before he arrived at the city of refuge, the latter was free. If a new high priest had been elected before judgment was pronounced in a trial for homicide, the interment took place. If any person was so unfortunate as to kill accidentally the high priest, or if this functionary was himself the culprit, he was confined to one of the appointed towns during the whole of his lifetime. Those who were conducted to the cities of refuge for the inadvertent murder of a fellow-man entailed no expense upon the State or their friends. The mother of the high priest supplied these offenders with food and clothing, in order that they might not pray for the death of her son!

The punishment provided for perjurers by the Pentateuch is peculiar. Like another Mosaic ordinance it was probably suggested to the Hebrew legislator by the practice of the ancient Egyptians. A false witness was condemned to suffer whatever pains and

penalties a conviction would have entailed upon those whom he wrongfully accused. Theoretically this appears extremely simple; its practical application was beset with difficulties. Nor is the language of the Bible sufficiently explicit in the case of sentence of death to render misinterpretation impossible. We have before indicated one case where a result of this injunction would prove a sheer absurdity, and the perjurer escape without any punishment whatever. Other instances are readily furnished. A man, for example, accuses another of accidental homicide; the penalty of this offence is internment in a city of refuge. The testimony is proved to be false; the witness perjured. Is he therefore to be conducted to a city of refuge? An offender confined to one of these places was not undergoing a species of imprisonment. He was perfectly free. The only influence that induced—nay, compelled—him to remain was the dread of being slain by the avenger of blood. A false witness, if condemned to

this internment, would have no fear of any such consequences ; the punishment would be ridiculous. In such a case the perjurer would laugh at the sentence and practically escape scot free. Again, a man accuses one of his neighbours of stealing a sheep. The law in this case enjoined fivefold restitution. If the thief be unable to pay the amount he could be sold into servitude until the next jubilee in order to furnish the money. The prisoner in this case is found to be poor. The witness is proved to have committed perjury : the accused is set free. How was the individual guilty of a false oath to be punished in this instance ? He might fairly object to being sold ; the neighbour whom he sought to ruin might justly urge that a money penalty was by no means equivalent to the years of servitude he could have been compelled to endure had the charge against him been established. The judges would find themselves in a difficulty. Yet more complicated was the application of the Mosaic

ordinance where the sentence of death was incurred. A difficulty in the interpretation of the law occurred at the very outset. The Sadducees—who adhered to the letter of Scripture—urged that a perjurer could not be capitally condemned unless the person whom he falsely accused had already been executed. They based their arguments upon the Biblical formula, 'Life for life.' Against these the rabbinists produced the Mosaic injunction. This expressly declares that the false witness should be punished, as he had 'intended' that the accused should suffer. The Ghemara holds the law to be both impracticable and incomprehensible. It seems, however, on one occasion to have been carried into effect. The instance is recorded in the Talmud. Judah, the son of Tabaï, condemned a perjurer to death; he was accordingly executed. The rabbin subsequently related the circumstance to Shimon, the son of Shatah. The latter thereupon asserted that innocent blood had been shed, and ex-

pounded the law to his colleague. From thenceforward the son of Tabaï never pronounced a judgment in the absence of Shimon ben Shatah; and every day as long as he lived he visited the cemetery and threw himself upon the grave of the witness whom he had condemned. To obviate any difficulties the Talmud prescribed for all cases of perjury one uniform punishment: stripes—that is, flogging.

According to the prescription of the Pentateuch an offender sentenced to be flogged was always punished in the presence of the Synhedrin that condemned him. The stripes, which might not exceed thirty-nine in number, were inflicted mercifully. A post was fixed in the earth; to this the hands of the offender were tied. The hazan—door-keeper, attendant, messenger, and in modern times the reader of the community—performed the duty of executioner. The culprit was first stripped to the waist. Two qualified judges then examined him to determine

how many stripes he was strong enough to endure. If these experts disagreed in their estimate the smaller number was accepted. If they decided that the offender was capable of enduring the whole thirty-nine, and it was subsequently found that he was not sufficiently robust to do so, punishment ceased. If, on the other hand, they considered that, say, only eighteen stripes should be inflicted, and it was afterwards seen that the criminal could bear the full quota, no addition might be made to the original estimate. In all cases the number fixed must be divisible into three even portions ; that is, if the judges decided the offender could bear twenty stripes, they must only award eighteen ; if eight, only six. The handle of the whip was four fingers' breadth long ; the thong of the same breadth and long enough to cross the body. One of the judges gave the word 'strike,' as the signal for each stripe ; another kept reckoning of the number : a third read three portions of Scripture aloud during the

punishment; the concluding verse being from the Psalms (lxxviii. 38): 'But He, being merciful, forgiveth iniquity.' If at any time during the flogging involuntary signs of weakness were observed the culprit was at once released. If he succeeded in freeing himself from the post or managed to escape, the punishment could not again be inflicted. If the whip broke during the flogging, it was not permitted to repair the lash and continue the stripes. In the Talmud stripes are prescribed as the penalty of nearly all ordinary offences of which the criminal code in those times took cognisance. Adultery, immorality, sacrilege, and public desecration of the Mosaic ceremonial laws were all in the later period of Jewish nationality punishable in this manner. Practically though, flogging seems to have been confined to perjury.

CHAPTER X.

MISCELLANEOUS LAWS—CONCLUSION.

THE Hebrew Penal Code necessarily includes a number of miscellaneous enactments not reducible under general headings. Many of these are interesting. The Talmud, for example, recognises justifiable homicide. Under certain circumstances it was permissible to kill a would-be criminal, in order to prevent the commission of either murder or adultery—as the Ghemara puts it, 'to save an innocent man's life or a woman's honour.' In self-defence; likewise to protect one's person or property against footpads or burglars it was of course allowable to take away life. Any offence perpetrated under compulsion or in mortal fear was excusable in the eyes of the law—excepting only murder and adultery.

If a man was threatened with death unless he consented to assassinate a neighbour, he was directed rather to die than slay an innocent person. Similarly, the Talmud enjoins every man to prefer death to dishonouring under compulsion an innocent woman. In times of religious persecution it was forbidden to violate in public the ordinances of the Bible. But the conditions constituting such violation were clearly discriminated. A man might attend to an idol, he might wash and anoint it, bring wood and lights to pagan temples; but if ordered under penalty of death to publicly acknowledge an image as his God he was bound to refuse. If a pagan commanded a Jew to cut grass for his horse on a Sabbath day he might do so; but if ordered to cut the fodder and throw it into the river (*i.e.* needlessly to desecrate his faith) he was not permitted to comply.

Another injunction of the Mosaic Code—copied from the laws of the Egyptians—required a man to risk even his life when

he saw a fellow-man in danger, under the penalty of flogging. (The Egyptians punished the omission with stripes or three days' imprisonment without food.) Stealing a fellow-Jew and selling him was, as we have already said, a capital crime. Stealing and concealing a man entailed upon the offender public flogging. An elder or judge who simply taught in contravention of the traditions of the Great Synhedrin of Jerusalem was not condemned to death unless he rendered decisions in accordance with his heterodox views and saw his judgments carried into effect. A criminal three times convicted and punished for an offence—adultery, paganism, perjury, &c.—entailing flogging, was imprisoned for life. An offender who succeeded in escaping when led to execution was not reconducted, when captured, to the tribunal by which he was tried and condemned. Two witnesses deposed to the fact of his conviction before the nearest Synhedrin, and the sentence was thereupon

carried out. A person tried for two crimes, each entailing a different kind of death, and convicted of both, was punished with the least painful of the two modes of execution. Two persons charged with a capital offence would not be heard and judged on the same day; not even if paramours in adultery. Confiscation of property was unknown to the Hebrew law, a malefactor's possessions always descending to the natural heritors. Double punishment—*bis in idem*—such as the payment of a pecuniary penalty in addition to flogging, was not permissible, except in the one instance where the infliction of both is specially prescribed in the Pentateuch.

The survey, necessarily brief and imperfect, here completed of the Criminal Laws of the Talmud, will enable even those who 'run and read' to form some idea of the Hebrew Penal Code and the practical mode of administering justice as it prevailed among the Israelites of old. The simplicity of the organisation, the mildness of the punish-

ments, and the humanity throughout apparent, may be left to speak for themselves. Before quitting the subject, a few words on the character of the men who framed and interpreted these enactments may not be amiss.

The favourite accusation hurled at the heads of the rabbins (apart from the epithets 'prejudiced' and 'narrow-minded') is that they adhered to the letter of the law; they did not inquire into the motives, into the spirit of its injunctions. Nothing can be more untrue; nothing more opposed to actual fact. He who would have proof of this need but read a single page of the Talmud, or have it read to him by some competent scholar. The adherence to the letter of the Pentateuch, which is always recommended by the traditional school, has a reason sound and practical. This is indicated in one of the most interesting bits of argument contained in the Treatise Synhedrin.

Only one injunction in the Five Books of

Moses is distinctly supplied with motive: the King is commanded not to take unto him a number of wives, in order that he may not be corrupted and led away to idolatry. Here the reason of the precept is distinctly given. The spirit, the essence of the enactment is that the Sovereign be not seduced to paganism. The Talmud points out that the indication of the motive in this instance is calculated to produce the very contrary effect to that intended. For the following reason:— 'A good man reading it will say, as King Solomon did, The object of this command is to preserve me from idolatry; surely I need not fear being seduced to the worship of strange deities. I am not afraid of violating the spirit of the law; therefore I need not adhere to the letter of the precept, provided I bear in mind its purport. Yet the very self-confidence engendered by regarding the motive only caused the fall of the wisest of men. For he took him many wives and they did corrupt him.' The argument of the

rabbins in reference to this precept shows a sound knowledge of human nature and its peculiar weaknesses.

As regards the narrow prejudices of the rabbins, it may be worth while again to call attention to the charge addressed to witnesses when about to give evidence, cautioning them against supposing that a Jew was superior to the men of other nations. Time after time the Talmud emphatically declares anent proselytism that it is not necessary to become a Hebrew in order to participate in a future existence. The Mishna, moreover, narrates how on the Day of Atonement, the most sacred and solemn fast of the year, when the Israelites sought pardon for their transgressions, seventy additional sacrifices were offered in the Temple to procure remission for the iniquities committed by the seventy nations then supposed to exist.

In the practical regulations of every-day life the same liberality is apparent. A pagan living among the Jews was not permitted to

keep the seventh day as a Sabbath if he rested upon another day in accordance with the custom of his own people. 'No man must be idle two days,' remarks the Talmud, 'in each week.' A pagan who blasphemed the Almighty was not punished; 'for,' say the rabbins, 'he does not believe in our God.' These are somewhat unusual modes of manifesting narrow-mindedness and prejudice and bigotry.

Of the criminal code formulated by these rabbins it may fairly be said, in the words of an old Chinese adage, that 'the pen of the law fears the thunder of Heaven.' Nothing, perhaps, can be more characteristic of the spirit of the Hebrew penal system, of its treatment of offenders, and of its modes of punishment than the graceful saying attributed in the Talmud to Berurah, wife of the pious Rabbi Meier and daughter of the no less renowned Chanina ben T'radyon. The Rabbi Meier was plagued with some extremely wicked neighbours. Angered at

their discreditable conduct, he cursed them. His gentle wife heard him. 'Nay, my husband,' she said, addressing him, 'cease thou; call rather upon the Almighty to turn thine neighbours from their evil ways, that they die not. How says the sweet Psalmist of Israel? We do not find, "Let sinners perish from off the earth," but "sins;" for if sin be destroyed and iniquity be blotted out, the earth will no longer be contaminated by sinners.' In this spirit the Hebrew criminal laws were conceived, and in this spirit were they interpreted and administered.

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